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Re: Applicants: Horst TROMBACH et al.
Serial No.: 10/009,429
Filed: November 5, 2001
For: SEALING DISC AND FILM COMPOSITE FOR A
CLOSURE OF A CONTAINER
Docket No.: 02576

Attached please find Draft Arguments for our telephone
conference on Thursday, March 24, 2005 at 2:00.

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DRAFT

ARGUMENTS

The Patent Office acknowledge that Han fails to disclose the fold being only in the uppermost layer, and is relying on the teachings of McCarthy for the disclosure that it is known to provide a grasping tab and fold from the uppermost layer alone (referring to element 24). The Patent Office has concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made, to provide the composite film of Han with the fold and grasping tab being formed by the uppermost layer alone, in order to reduce the amount of material used by providing a single layer in the folding tab.

Applicant respectfully traverses the rejection.

As noted in the response to the first Office Action, Han discloses an inner seal 18 with a first sealing portion 20, a second sealing portion 22, and a fold-over portion 24 positioned between the first sealing portion 20 and the second sealing portion 22. Each portion 20, 22, 24 is formed from a single continuously extending sheet of common layered material. The composite foil 30 from which the innerseal 18 is formed includes a plurality of layers 32, 36, 40 with adhesive layers 34, 38 being provided between the layers as shown in FIG. 3. In Han, each layer of the composite foil 30 is included in the fold-over portion 24. Thus, Han fails to disclose a film composite for a container enclosure in which only the uppermost layer of the film composite comprises an upwardly projecting fold.

McCarthy fails to cure the deficiencies of Han. McCarthy also fails to disclose a film composite for a contained enclosure in which only the uppermost layer of the film composite comprises an upwardly projecting fold.

McCarthy is nothing more than the type of design discussed in the background of the present application. (See Substitute Specification at Page 3, Lines 4-27). As noted in the background, the loose tab portion 24 of uppermost layer 40 of McCarthy is disadvantageous because: 1) it involves a laborious laminating process to obtain the partial layer of adhesive 38; and 2) the loose end or tab portion 24 is susceptible to buckling, creasing and destruction as a result of the friction involved in rotating the screw closure. As a result, one of ordinary skill in the art attempting to reduce the amount of material used in Han would not be led to consider the teachings of McCarthy, other than perhaps for the teaching of using a partial layer of adhesive.

The first rejection is based upon Han as the main reference and McCarthy as the secondary reference. In other words the Examiner argues that it is obvious to provide the Han composite film with the McCarthy "fold and grasping tab being formed by the uppermost layer alone". First, it is clear that the tabs in either reference are meant for the same purpose, namely, to enable one to grasp and remove the seal. Each reference describes a different way of accomplishing this. There is no teaching in either reference as to how one would take portions of either reference to make a modified seal. They simply represent two different ways of making a seal.

The only obvious substitution regarding these references would be to substitute the tab arrangement (24) in McCarthy for the entire fold-over portion (24) in Han. Such a substitution does not teach the structure of the present invention. For there to be a proper obviousness rejection there has to be a suggestion in either of the references to make the claimed combination. Where is the suggestion in either reference to double-fold only the uppermost layer? The clear answer is that there is no such suggestion in either reference.

McCarthy shows no suggestion of a double-fold to provide a strengthened tab. Han, in column 3, starting at line 20 specifically describes the various portions as "all formed from a single continuously extending sheet of common layered material". See also column 7 and the description of Fig. 8 where it is clear that the several layers together form the fold-over portion 24. Fig. 8 is described as a diagrammatic view of an inner seal according to the embodiment of Fig. 3. This includes the folding over of the entire "layered material 30". Once again, there is no suggestion in either reference of folding over only the uppermost layer, and thus the combination suggested by the Examiner is not obvious.

For there to be a proper obviousness rejection, there has to be found in one of the two references a suggestion that one takes only the uppermost layer of the multi-layer arrangement and forms a double-fold with only that layer to form the tab. There is no such suggestion in either reference. Where is the suggestion in Han to take the tab 24 of McCarthy and modify Han by taking only their uppermost layer, such as layer 40 in Fig. 3 of Han, and double folding that layer to form the tab? The clear answer is that there is no suggestion to do that in either reference.

The second main rejection is based upon McCarthy as the main reference and Han as the secondary reference. In other words the Examiner argues that it is obvious to provide the

McCarthy composite film with the Han "double fold". The same argument as presented above also applies to this combination as set forth by the Examiner. From the Han teaching where is the suggestion to fold only layer 24 in McCarthy? There is no suggestion. McCarthy teaches folding all layers to provide the tab. There is no suggestion from Han to fold only the layer 24 in McCarthy. There is no suggestion in McCarthy to provide any double-fold of the uppermost layer.